

*** Bill No. ***

Introduced By *****

By Request of the (Agency or Department)

A Bill for an Act entitled: "An Act creating an administrative code committee; designating the administrative code committee as the administrative rule review committee for purposes of the Montana Administrative Procedure Act; eliminating the responsibility for rule review from the interim committees of the legislature; providing for coordination of the work of the administrative code committee with the interim committees; authorizing the administrative code committee to meet during a legislative session; providing for the selection, staffing, powers, and duties of the committee; amending sections 2-4-102, 5-5-202, 5-5-215, 5-5-223, 5-5-224, 5-5-225, 5-5-226, 5-5-227, 5-5-228, and 5-5-230, MCA ; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. Section 1. Administrative code committee.

(1) There is an administrative code committee. The

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committee shall serve as the administrative rule review committee as defined in 2-4-102.

(2) The committee is treated as an interim committee for the purposes of 5-5-211 through 5-5-214. The committee shall meet at those times determined by its presiding officer or a majority of its members, including during a legislative session.

(3) The committee may conduct studies of the implementation of the Montana Administrative Procedure Act as determined by a majority of its members. During an interim when the legislature is not in session, the committee may coordinate its work with that of the interim committees of the legislature provided for in 5-5-202.

Section 2. Section 2-4-102, MCA, is amended to read:

"2-4-102. Definitions. For purposes of this chapter, the following definitions apply:

(1) "Administrative rule review committee" or "committee" means the ~~appropriate committee assigned subject matter jurisdiction in Title 5, chapter 5, part 2~~ administrative code committee established in [section 1].

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(2) (a) "Agency" means an agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons and parole, except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ARM and the register;

(ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

(iii) the board of regents and the Montana university system;

(iv) the financing, construction, and maintenance of public works;

(v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252 and 69-3-837.

(b) Agency does not include a school district, unit of local government, or any other political subdivision of the state.

(3) "ARM" means the Administrative Rules of Montana.

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(4) "Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) (a) "Interested person" means a person who has expressed to the agency an interest concerning agency actions under this chapter and has requested to be placed on the agency's list of interested persons as to matters of which the person desires to be given notice.

(b) The term does not extend to contested cases.

(6) "License" includes the whole or part of an agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(7) "Licensing" includes an agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(8) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but this chapter may not be construed

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to prevent an agency from admitting any person as a party for limited purposes.

(9) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(10) "Register" means the Montana Administrative Register.

(11) (a) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule.

(b) The term does not include:

(i) statements concerning only the internal management of an agency or state government and not affecting private rights or procedures available to the public, including rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(ii) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

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(iii) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(iv) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules is indicated to the public by means of signs or signals; or

(v) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the ARM.

(12) (a) "Significant interest to the public" means agency actions under this chapter regarding matters that the agency knows to be of widespread citizen interest. These matters include issues involving a substantial fiscal impact to or controversy involving a particular class or group of individuals.

(b) The term does not extend to contested cases.

(13) "Substantive rules" are either:

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(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law."

{Internal References to 2-4-102:

2-11-103	2-11-103	2-17-807	13-2-221
16-11-149	40-5-232	40-5-277	}

Section 3. Section 5-5-202, MCA, is amended to read:

"5-5-202. Interim committees. (1) During an interim when the legislature is not in session, the committees listed in subsection (2) are the interim committees of the legislature. They are empowered to sit as committees and may act in their respective areas of responsibility. The functions of the legislative council, legislative audit committee, legislative finance committee, environmental quality council, administrative code committee, and state-tribal relations committee are provided for in the statutes governing those committees.

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(2) The following are the interim committees of the legislature:

- (a) economic affairs committee;
- (b) education and local government committee;
- (c) children, families, health, and human services committee;
- (d) law and justice committee;
- (e) energy and telecommunications committee;
- (f) revenue and transportation committee; and
- (g) state administration and veterans' affairs committee.

(3) An interim committee or the environmental quality council may refer an issue to another committee that the referring committee determines to be more appropriate for the consideration of the issue. Upon the acceptance of the referred issue, the accepting committee shall consider the issue as if the issue were originally within its jurisdiction. If the committee that is referred an issue declines to accept the issue, the original committee retains jurisdiction.

(4) If there is a dispute between committees as to which committee has proper jurisdiction over a subject, the

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legislative council shall determine the most appropriate committee and assign the subject to that committee."

{Internal References to 5-5-202:

5-11-105 47-1-105 }

Section 4. Section 5-5-215, MCA, is amended to read:

"5-5-215. Duties of interim committees. (1) Each interim committee shall:

(a) ~~review administrative rules within its jurisdiction,~~

~~(b)~~ subject to 5-5-217(3), conduct interim studies as assigned;

~~(e)~~ (b) monitor the operation of assigned executive branch agencies with specific attention to the following:

(i) identification of issues likely to require future legislative attention;

(ii) opportunities to improve existing law through the analysis of problems experienced with the application of the law by an agency; and

(iii) experiences of the state's citizens with the operation of an agency that may be amenable to improvement through legislative action;

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~~(d)~~ (c) review proposed legislation of assigned agencies or entities as provided in the joint legislative rules; and

~~(e)~~ (d) accumulate, compile, analyze, and furnish information bearing upon its assignment and relevant to existing or prospective legislation as it determines, on its own initiative, to be pertinent to the adequate completion of its work.

(2) Each interim committee shall prepare bills and resolutions that, in its opinion, the welfare of the state may require for presentation to the next regular session of the legislature.

(3) The legislative services division shall keep accurate records of the activities and proceedings of each interim committee."

{Internal References to 5-5-215: None }

Section 5. Section 5-5-223, MCA, is amended to read:

"5-5-223. Economic affairs interim committee. The economic affairs interim committee has ~~administrative rule review,~~ draft legislation review, program evaluation, and monitoring functions for the following executive branch

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agencies and the entities attached to agencies for administrative purposes:

- (1) department of agriculture;
- (2) department of commerce;
- (3) department of labor and industry;
- (4) department of livestock;
- (5) office of the state auditor and insurance

commissioner; and

- (6) office of economic development."

{Internal References to 5-5-223:

2-15-1019 2-15-2511 5-11-105* }

Section 6. Section 5-5-224, MCA, is amended to read:

"5-5-224. Education and local government interim committee. (1) The education and local government interim committee shall act as a liaison with local governments. The education and local government interim committee has ~~administrative rule review,~~ draft legislation review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes:

- (a) state board of education;
- (b) board of public education;
- (c) board of regents of higher education; and

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(d) office of public instruction.

(2) The committee shall:

(a) provide information to the board of regents in the following areas:

(i) annual budget allocations;

(ii) annual goal statement development;

(iii) long-range planning;

(iv) outcome assessment programs; and

(v) any other area that the committee considers to have significant educational or fiscal policy impact;

(b) periodically review the success or failure of the university system in meeting its annual goals and long-range plans;

(c) periodically review the results of outcome assessment programs;

(d) develop mechanisms to ensure strict accountability of the revenue and expenditures of the university system;

(e) study and report to the legislature on the advisability of adjustments to the mechanisms used to determine funding for the university system, including criteria for determining appropriate levels of funding;

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(f) act as a liaison between both the legislative and executive branches and the board of regents;

(g) encourage cooperation between the legislative and executive branches and the board of regents;

(h) promote and strengthen local government through recognition of the principle that strong communities, with effective, democratic governmental institutions, are one of the best assurances of a strong Montana;

(i) bring together representatives of state and local government for consideration of common problems;

(j) provide a forum for discussing state oversight of local functions, realistic local autonomy, and intergovernmental cooperation;

(k) identify and promote the most desirable allocation of state and local government functions, responsibilities, and revenue;

(l) promote concise, consistent, and uniform regulation for local government;

(m) coordinate and simplify laws, rules, and administrative practices in order to achieve more orderly and less competitive fiscal and administrative relationships between and among state and local governments;

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(n) review state mandates to local governments that are subject to 1-2-112 and 1-2-114 through 1-2-116;

(o) make recommendations to the legislature, executive branch agencies, and local governing bodies concerning:

(i) changes in statutes, rules, ordinances, and resolutions that will provide concise, consistent, and uniform guidance and regulations for local government;

(ii) changes in tax laws that will achieve more orderly and less competitive fiscal relationships between levels of government;

(iii) methods of coordinating and simplifying competitive practices to achieve more orderly administrative relationships among levels of government; and

(iv) training programs and technical assistance for local government officers and employees that will promote effectiveness and efficiency in local government; and

(p) conduct interim studies as assigned."

{Internal References to 5-5-224:
5-11-105* }

Section 7. Section 5-5-225, MCA, is amended to read:

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"5-5-225. Children, families, health, and human services interim committee. The children, families, health, and human services interim committee has ~~administrative rule review,~~ draft legislation review, program evaluation, and monitoring functions for the department of public health and human services and the entities attached to the department for administrative purposes."

{ Internal References to 5-5-225:
5-11-105* }

Section 8. Section 5-5-226, MCA, is amended to read:

"5-5-226. Law and justice interim committee. The law and justice interim committee has ~~administrative rule review,~~ draft legislation review, program evaluation, and monitoring functions for the department of corrections and the department of justice and the entities attached to the departments for administrative purposes. The committee shall act as a liaison with the judiciary."

{ Internal References to 5-5-226:
5-11-105* 47-1-105 }

Section 9. Section 5-5-227, MCA, is amended to read:

"5-5-227. Revenue and transportation interim committee -- powers and duties -- revenue estimating and use of estimates. (1) The revenue and transportation

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interim committee has ~~administrative rule review~~, draft legislation review, program evaluation, and monitoring functions for the department of revenue and the department of transportation and the entities attached to the departments for administrative purposes.

(2) (a) The committee must have prepared by December 1 for introduction during each regular session of the legislature in which a revenue bill is under consideration an estimate of the amount of revenue projected to be available for legislative appropriation.

(b) The committee may prepare for introduction during a special session of the legislature in which a revenue bill or an appropriation bill is under consideration an estimate of the amount of projected revenue. The revenue estimate is considered a subject specified in the call of a special session under 5-3-101.

(3) The committee's estimate, as introduced in the legislature, constitutes the legislature's current revenue estimate until amended or until final adoption of the estimate by both houses. It is intended that the legislature's estimates and the assumptions underlying the estimates will be used by all agencies with

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responsibilities for estimating revenue or costs, including the preparation of fiscal notes.

(4) The legislative services division shall provide staff assistance to the committee. The committee may request the assistance of the staffs of the office of the legislative fiscal analyst, the legislative auditor, the department of revenue, and any other agency that has information regarding any of the tax or revenue bases of the state."

{Internal References to 5-5-227:

5-3-101 5-11-105* 17-7-140 }

Section 10. Section 5-5-228, MCA, is amended to read:

"5-5-228. State administration and veterans' affairs interim committee. (1) The state administration and veterans' affairs interim committee has ~~administrative rule review,~~ draft legislation review, program evaluation, and monitoring functions for the public employee retirement plans and for the following executive branch agencies and the entities attached to the agencies for administrative purposes:

- (a) department of administration;
- (b) department of military affairs; and
- (c) office of the secretary of state.

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(2) The committee shall:

(a) consider the actuarial and fiscal soundness of the state's public employee retirement systems, based on reports from the teachers' retirement board, the public employees' retirement board, and the board of investments, and study and evaluate the equity and benefit structure of the state's public employee retirement systems;

(b) establish principles of sound fiscal and public policy as guidelines;

(c) as necessary, develop legislation to keep the retirement systems consistent with sound policy principles;

(d) solicit and review proposed statutory changes to any of the state's public employee retirement systems;

(e) report to the legislature on each legislative proposal reviewed by the committee. The report must include but is not limited to:

(i) a summary of the fiscal implications of the proposal;

(ii) an analysis of the effect that the proposal may have on other public employee retirement systems;

(iii) an analysis of the soundness of the proposal as a matter of public policy;

(iv) any amendments proposed by the committee; and

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(v) the committee's recommendation on whether the proposal should be enacted by the legislature.

(f) attach the committee's report to any proposal that the committee considered and that is or has been introduced as a bill during a legislative session; and

(g) publish, for legislators' use, information on the state's public employee retirement systems.

(3) The committee may:

(a) specify the date by which proposals affecting a retirement system must be submitted to the committee for the review contemplated under subsection (2)(d); and

(b) request personnel from state agencies, including boards, political subdivisions, and the state public employee retirement systems, to furnish any information and render any assistance that the committee may request."

{Internal References to 5-5-228:
5-11-105 }

Section 11. Section 5-5-230, MCA, is amended to read:

"5-5-230. Energy and telecommunications interim committee. The energy and telecommunications interim committee has ~~administrative rule review~~, draft legislation review, program evaluation, and monitoring functions for

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the department of public service regulation and the public
service commission."

{ Internal References to 5-5-230:

69-8-402 90-4-1002 }

NEW SECTION. Section 12. {standard} Codification.

[Section 1] is intended to be codified as an integral part
of Title 5, chapter 5, part 2, and the provisions of Title
5, chapter 5, part 2 apply to [section 1].

NEW SECTION. Section 13. {standard} Effective date.

[This act] is effective July 1, 2009.

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